

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1 and 4-24 are pending in the application, with claims 1, 19, and 20 being the independent claims. Claims 2 and 3 are cancelled. Claim 1 is amended to incorporate limitations from claims 2 or 3. Claim 19 is amended to incorporate limitations from claims 2 or 3, and to delete limitations from the original claim 19. Claim 24 is amended to capitalize trademarks and to properly recite the Markush group, as suggested by the Examiner. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Double Patenting Rejections

The Examiner states on page 2 of the Office Action that "Applicant's arguments filed on 12/03/2007 are persuasive and the previous rejection is, therefore, withdrawn." In the previous Office Action, the Examiner gave double patenting rejections on claims 1-13 and 19-24. Applicants argued that at least the double patenting rejection of claim 19 was improper because claim 19 read on "species b" -- which was an unelected species from the parent application. It is unclear whether the Examiner is only withdrawing the double patenting rejection of claim 19, or if all the double patenting rejections from the First Office Action are being withdrawn (claims 1-13 and 19-24).

35 U.S.C. §112(2) Rejections

Claim 24 is currently amended to capitalize trademarks and to properly recite the Markush group in the format "selected from the group consisting of A, B, C, and D." Therefore, the 112(2) rejections should be withdrawn.

35 U.S.C. §103(a) Rejections

The rejections of claims 2 and 3 are respectfully traversed.

The Examiner relies solely on legal precedent to allege that claims 2 and 3 are obvious over USPN 5,102,010 ("Osgar *et al.*") Claim 2 recites, *inter alia*, "at least one welded seam is of a T-shaped configuration." Claim 3 recites, *inter alia*, "... at least one welded seam is of a V-shaped configuration." The Examiner alleges that these structures are merely matters of "adjustability."

The Examiner cites *In re Stevens*, 212 F.2d 197, 101 USPQ 284 (CCPA 1954). In that case, claims were directed to a handle for a fishing rod wherein the handle has a longitudinally adjustable finger hook, and the hand grip of the handle connects with the body portion by means of a universal joint. The court held that adjustability, where needed, is not a patentable advance, and because there was an art-recognized need for adjustment in a fishing rod, the substitution of a universal joint for the single pivot of the prior art would have been obvious.

Claims 2 and 3 do not implicate "adjustability" in any sense, particularly not in any sense where *In re Stevens* is relevant legal precedent. Relying upon legal precedent to provide the rationale supporting obviousness is only proper "if the facts in a prior legal decision are sufficiently similar to those in an application under examination," in which

case, "the examiner may use the rationale used by the court." (emphasis added) MPEP §2144.04. Since the facts of *In re Stevens* (longitudinally adjustable finger hook) are not similar to those in claims 2 and 3 (configuration of a welded seam), the rejections are improper and must be withdrawn.

The rejections of claims 20-24 are respectfully traversed.

Independent claim 20 recites, *inter alia*, "A propellant gas-free atomizer" (emphasis added). An exemplary propellant gas-free atomizer is disclosed in paragraph [0098] of the instant application. Specifically, the atomizer incorporating a hollow plunger shown in Figures 6a and 6b of the kind described in WO-97/12687 is incorporated by reference. This example propellant gas-free atomizer is mentioned by way of example to contrast with the pressurized gas atomizer of Hughes cited by the Examiner (as discussed below), and should not be construed to be a claim limitation.

The Examiner alleges that claim 20 is obvious over USPN 6,158,676 ("Hughes") in view of Osgar *et al.* The atomizer of Hughes (Fig. 7B) is not propellant gas-free; rather, "aerosol metered dose vial 412 feeds a pressurized gas combined with and containing medicant ... pressurized gas and medicament then exits..." (emphasis added) (Hughes, col. 12, ll. 38-41). Apparently, pressurized gas is *necessary* for the atomizer of Hughes to function. Therefore, it would not be obvious to use the invention of the instant application (foil bag / propellant gas-free atomizer) in connection with the device of Hughes (vial 412 / pressurized gas), because Hughes teaches away. Therefore, the references cannot be combined, and the rejection must be withdrawn. *See* MPEP §2145

X D(2) (stating "it is improper to combine references where the references teach away from their combination.")

Claims 21-24 depend from claim 20 and are therefore allowable at least for this reason.

Claim amendments

Independent claim 1 is amended to recite, *inter alia*, "...said foil bag having at least one welded seam of a substantially T-shaped or substantially V-shaped configuration."

Independent claim 19 is similarly amended to recite, *inter alia*, "at least one welded seam of a substantially T-shaped or substantially V-shaped configuration to seal edges of said foil bag and close a first end of said foil bag."

The prior art of record does not teach, expressly or implicitly, T-shaped or V-shaped configurations for welded seams. As discussed above with regard to the obviousness rejections of claims 2 and 3, one of ordinary skill in the art would not be motivated to modify or combine any of the prior art of record to include this limitation.

Independent claim 20 is not amended for reasons discussed above.

Reply to Office Action February 12, 2008

Freund *et al.*
Appl. No. 10/754,499

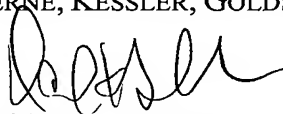
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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